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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Philip S. Matwyuk,
10 Plaintiff,

No. CV 22-08082-PCT-JAT (DMF)

11 v.

ORDER

12 State of Arizona, et al.,
13 Defendants.
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15 On January 20, 2022, Plaintiff Philip S. Matwyuk, a prisoner confined in the
16 Arizona State Prison Complex-Tucson, filed a pro se Complaint in the Mohave County
17 Superior Court against the State of Arizona, Arizona Attorney General Brnovich, the
18 Kingman Police Department, Kingman Police Officer Brandon Delong, the Mohave
19 County Attorney's Office, and Deputy Mohave County Attorney James Schoppmann.¹
20 Plaintiff asserts violations of his constitutional rights (Doc. 1-3). On May 5, 2022, the
21 County and City Defendants removed to this Court and represent that the State of Arizona
22 Defendants have consented to removal. Defendants filed a motion to stay until the Court
23 screens the Complaint (Doc. 3). Plaintiff has filed an objection to the removal (Doc. 4),
24 and Defendants have filed a Motion to Strike Plaintiff's objection (Doc. 5).

25 Plaintiff's federal claims against Defendants Kingman Police Department and
26

27
28 ¹ Plaintiff repeatedly refers to Schoppmann as an Arizona District Attorney and
apparently, albeit erroneously, believes that Schoppmann worked for the Arizona Attorney
General's Office. Schoppman was, and apparently remains, a Deputy Mohave County
Attorney.

1 Mohave County Attorney's Office will be dismissed as neither is a proper defendant under
 2 42 U.S.C. § 1983. Plaintiff's remaining federal claims will be dismissed as barred by *Heck*
 3 *v. Humphrey*, 512 U.S. 477, 486-87 (1994), as not yet having accrued. The Court will
 4 remand the balance of Plaintiff's claims.

5 **I. Removal**

6 A state court defendant may remove to federal court any civil action brought in the
 7 state court over which the federal district courts would have original jurisdiction. 28 U.S.C.
 8 § 1441(a). In his Complaint, Plaintiff alleges federal constitutional violations. This
 9 Court's jurisdiction extends to claims for violation of constitutional rights under 42 U.S.C.
 10 § 1983. *See* 28 U.S.C. § 1331 (a federal court has original jurisdiction "of all civil actions
 11 arising under the Constitution, laws, or treaties of the United States"). Further, the Court
 12 may exercise supplemental jurisdiction over related state-law claims. 28 U.S.C. § 1367(c).
 13 The removing Defendants removed the case within 30 days of being served with the
 14 Complaint and indicate the remaining Defendants consented to removal. It therefore
 15 appears this case was timely and properly removed.

16 Plaintiff objects to removal on the basis that removal does not constitute an answer
 17 or defense to his claims. However, as described above, federal law specifically provides
 18 that a state court defendant may remove a case from state to federal court if a plaintiff has
 19 alleged a claim over which a federal court has subject matter jurisdiction, as Plaintiff has.
 20 Accordingly, Plaintiff's objection is overruled.

21 **II. Statutory Screening of Prisoner Complaints**

22 The Court is required to screen complaints brought by prisoners seeking relief
 23 against a governmental entity or an officer or an employee of a governmental entity. 28
 24 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
 25 has raised claims that are legally frivolous or malicious, that fail to state a claim upon which
 26 relief may be granted, or that seek monetary relief from a defendant who is immune from
 27 such relief. 28 U.S.C. § 1915A(b)(1)–(2).

28 A pleading must contain a "short and plain statement of the claim *showing* that the

1 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
 2 not demand detailed factual allegations, “it demands more than an unadorned, the-
 3 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 4 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
 5 conclusory statements, do not suffice.” *Id.*

6 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 7 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
 8 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
 9 that allows the court to draw the reasonable inference that the defendant is liable for the
 10 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
 11 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 12 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual
 13 allegations may be consistent with a constitutional claim, a court must assess whether there
 14 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

15 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
 16 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342
 17 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent
 18 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551
 19 U.S. 89, 94 (2007) (per curiam)).

20 If the Court determines that a pleading could be cured by the allegation of other
 21 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal
 22 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).
 23 Plaintiff’s federal claims against the Defendants will be dismissed without leave to amend
 24 because they cannot be amended to cure their deficiencies. The Court will remand the
 25 balance of Plaintiff’s Complaint to the Mohave County Superior Court.

26 **III. Complaint**

27 In his Complaint, Plaintiff asserts violations of his federal constitutional rights under
 28 42 U.S.C. § 1983 and state law claims. All of Plaintiff’s claims are asserted in connection

1 with his conviction by a jury in Mohave County Superior Court, case # CR 201200754.
 2 *See State v. Matwyuk*, No. 1 CA-CR 14-0202, 2015 WL 3400939, at *1-3 (Ariz. Ct. App.
 3 May 26, 2015). In that case, Plaintiff was convicted of offenses occurring on June 2, 2012
 4 as follows: first degree burglary, attempted second-degree murder aggravated assault,
 5 aggravated assault by domestic violence, aggravated assault, disorderly conduct with a
 6 weapon, misdemeanor assault, and misdemeanor assault. *Id.* The Arizona Court of
 7 Appeals affirmed Plaintiff's convictions and sentence on direct appeal.

8 On November 7, 2017, the Arizona Court of Appeals granted review, but denied
 9 relief, from the dismissal of Plaintiff's state petition for post-conviction relief. *State v.*
 10 *Matwyuk*, No. 1 CA-CR 16-0833 PRPC, 2017 WL 5147238, at *1 (Ariz. Ct. App. Nov. 7,
 11 2017). On June 5, 2020, this Court dismissed Plaintiff's petition for writ of habeas corpus
 12 on the merits. *Matwyuk v. Ryan*, 3:18-08299-PCT-JAT (D. Ariz. June 5, 2020), Doc. 30.
 13 The Ninth Circuit Court of Appeals denied a certificate of appealability, No. 20-16316 (9th
 14 Cir. Jan. 14, 2021), and the United States Supreme Court denied a petition for writ of
 15 certiorari, No. 21-8005 (2021).

16 In his Complaint, Plaintiff alleges that Defendants Brnovich, Delong, and
 17 Schoppmann concealed or falsified evidence and prosecutorial misconduct in violation of
 18 various state and federal constitutional rights, including nondisclosure of *Brady* evidence
 19 and wrongful conviction.

20 **IV. 42 U.S.C. § 1983**

21 A plaintiff may seek damages for violation of his federal constitutional rights under
 22 42 U.S.C. § 1983. To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the
 23 defendants (2) under color of state law (3) deprived him of federal rights, privileges or
 24 immunities and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158,
 25 1163-64 (9th Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game*
 26 *Comm'n*, 42 F.3d 1278, 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he
 27 suffered a specific injury as a result of the conduct of a particular defendant and he must
 28 allege an affirmative link between the injury and the conduct of that defendant. *Rizzo v.*

1 *Goode*, 423 U.S. 362, 371-72, 377 (1976).

2 **A. Improper Defendants Under § 1983**

3 Plaintiff sues the Kingman Police Department and the Mohave County Attorney's
4 Office. Plaintiff may not obtain relief under § 1983 against either.

5 A police department is not a "person" within the meaning of § 1983. *See e.g.*,
6 *Petaway v. City of New Haven Police Dep't*, 541 F. Supp. 2d 504, 510-11 (D. Conn. 2008);
7 *Pahle v. Colebrookdale Tp.*, 227 F. Supp. 2d 361, 367 (E.D. Pa. 2002); *Johnson v.*
8 *Scottsdale Police Dep't*, No. CV15-0094, 2015 WL 875371, at *3 (D. Ariz. Mar. 2, 2015).
9 The Kingman Police Department is merely a subpart of the City of Kingman, not a separate
10 entity for purposes of suit. *Gotbaum v. City of Phoenix*, 617 F. Supp. 2d 878, 886 (D. Ariz.
11 2008); *see Brailard v. Maricopa County*, 232 P.3d 1263, 1269 (Ariz. Ct. App. 2010)
12 (county sheriff's office is a nonjural entity); *see also Vincente v. City of Prescott*, 2012 WL
13 1438695 (D. Ariz. 2012) (city fire department is a nonjural entity). Accordingly, to the
14 extent that Plaintiff asserts any federal claim under § 1983 against the Kingman Police
15 Department, such claim will be dismissed.

16 A county attorney's office also is not a "person" under 42 U.S.C. § 1983. *Wilson v.*
17 *Yavapai Cnty.*, 2012 WL 1067959 (D. Ariz. 2012) (county sheriff's office and county
18 attorney's office are nonjural entities). Accordingly, to the extent that Plaintiff asserts any
19 federal claim under § 1983 against the Mohave County Attorney's Office, such claim will
20 be dismissed.

21 **B. Heck v. Humphrey**

22 Plaintiff seeks damages for alleged federal constitutional violations in connection
23 with his criminal proceedings, which he contends resulted in his wrongful conviction and
24 imprisonment. A civil rights claim brought under § 1983 that, if successful, would
25 necessarily undermine the validity of a conviction or the duration of a sentence may not be
26 brought before the prisoner has obtained a "favorable termination" of the underlying
27 conviction. *Heck v. Humphrey*, 512 U.S. 477, 489 (1994). A prisoner's sole federal
28 remedy to challenge the validity or duration of his confinement is a petition for a writ of

1 habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973); *Docken v. Chase*, 393 F.3d
 2 1024, 1031 (9th Cir. 2004). That is, a civil rights claim under § 1983 does not accrue unless
 3 or until the prisoner has obtained a “favorable termination” of the underlying conviction.
 4 *See Heck*, 512 U.S. at 489. Under the “favorable termination” rule:

5 In order to recover damages for allegedly unconstitutional conviction or
 6 imprisonment, or for other harm caused by action whose unlawfulness would
 7 render a conviction of sentence invalid, a § 1983 plaintiff must prove that the
 8 conviction or sentence has been reversed on direct appeal, expunged by
 9 executive order, declared invalid by a state tribunal . . . or called into question
 10 by a federal court’s issuance of a writ of habeas corpus

11 *Id.*, 512 U.S. at 486-87. Without such a showing of a “favorable termination,” a person’s
 12 cause of action under § 1983 has not yet accrued. *Id.* at 489. Thus, success on any claim
 13 under § 1983 that would necessarily imply the invalidity of confinement, or its duration,
 14 does not accrue “and may not be brought” unless and until the underlying conviction,
 15 sentence or parole decision is reversed. Only then may a plaintiff properly seek relief under
 16 42 U.S.C. § 1983.

17 Plaintiff’s federal claims, if successful, would necessarily imply the invalidity of his
 18 conviction. Plaintiff has not shown or alleged, and it does not otherwise appear, that
 19 Plaintiff’s conviction has been reversed, expunged, or otherwise invalidated. Accordingly,
 20 Plaintiff’s federal claims will be dismissed as not yet having accrued under *Heck*. The
 21 Court declines to exercise supplemental jurisdiction over Plaintiff’s non-federal claims. 28
 22 U.S.C. § 1367(c). Plaintiff’s remaining non-federal claims will be remanded to the Mohave
 23 County Superior Court.

24 **IT IS ORDERED:**

25 (1) Plaintiff’s objection to removal (Doc. 4) is **overruled**.

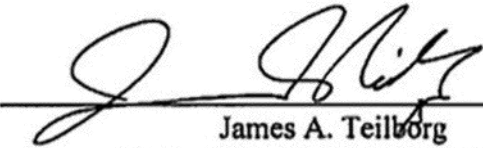
26 (2) Plaintiff’s federal claims are **dismissed as to Defendants Kingman Police**
 27 **Department and Mohave County Attorney’s Office** without leave to amend for failure
 28 to state a claim and are **dismissed as to the remaining Defendants** without prejudice as
 not yet having accrued under *Heck v. Humphrey*, 512 U.S. 477, 489 (1994).

1 (3) Defendants' motion for screening (Doc. 3) and motion to strike (Doc. 5) are
2 **denied** as moot.

3 (4) The Clerk of the Court must remand Plaintiff's remaining claims to the
4 Mohave County Superior Court and close the federal case.

5 Dated this 8th day of June, 2022.

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James A. Teilborg
Senior United States District Judge